

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

WILLIE BROWN, et al.,	:	CIVIL ACTION
Plaintiffs	:	
	:	
v.	:	
	:	
UNITED STATES OF AMERICA,	:	No. 05-CV-1599
Defendant	:	

MEMORANDUM AND ORDER

This case arises from a motor vehicle accident on August 16, 2002 in which plaintiffs Willie Brown and Bernard Adams claim the car operated by Brown was struck from behind by a United States Postal Service truck. Brown denies changing lanes or causing the accident, and plaintiffs claim they sustained physical injury requiring medical treatment and testing over several months. Defendant United States of America (“the government”) asserts Brown swerved into the path the Postal Service truck to avoid hitting an illegally parked vehicle. The government contends this minor accident was fully Brown’s fault and, alternatively, Brown was more than 50% at fault, barring his recovery. A non-jury trial will begin January 17, 2006.

The government has moved in limine seeking an order: (1) permitting it to rely on Brown’s election of the “limited tort” option in his automobile insurance policy; (2) requiring Brown to establish by a preponderance of the evidence that he suffered a “serious injury” to recover non-economic damages; and (3) limiting plaintiffs’ damages to the amounts asserted in

their administrative claims.<sup>1</sup> For the following reasons, the motion is granted.

## I. Factual findings

The underlying dispute is who was at fault in the August 16, 2002 collision and what, if any, damages are recoverable. The following undisputed facts are relevant to the determination of the legal limitations on plaintiffs' claimed damages.

- Brown was driving a 1992 Mercury Grand Marquis, which was then insured by The Hartford. (See Hartford Policy number 55 PHF 513652, Government Exhibit "A")
- Brown had elected the "limited tort" option, which bars a policyholder from recovering non-economic (pain and suffering) damages for any non-serious injury. As a result, Brown paid a reduced premium.
- The Postal Service vehicle was not registered in any state because Postal Service vehicles are not required to be registered in any state. (See Declaration of George Buechele, Government Exhibit "B")
- On August 13, 2004, Brown submitted a claim to the Postal Service for \$39,296.28 (including \$4,296.28 for property damage to his car); and Adams submitted a claim for \$25,000. (See Administrative Claims, Government Exhibit "C")
- All medical reports listed in plaintiffs' pretrial memorandum pre-date their administrative claims.

## II. Discussion

### A. Standard for Admissibility

Relevant evidence is "evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action" – that is, any "material fact" -- "more or

---

<sup>1</sup> The government asserted as affirmative defenses that plaintiffs are prohibited from recovering against the United States an amount in excess of that set forth in a claim validly presented to the United States Postal Service pursuant to 28 U.S.C. § 2675(b); and that plaintiffs' claims may be barred, in whole or in part, by the Pennsylvania Motor Vehicle Financial Responsibility Law ("PMVFL"), including but not limited to the exclusion of non-economic damages under the so-called limited tort option.

less probable than it would be without the evidence." Fed. R. Evid. 401. Thus, the relevance of any proposed evidence of non-economic damages depends, in part, on whether: (1) the government may rely upon the PMVFRL and its provisions regarding the effect of Brown's election of the limited tort option in his automobile policy; and (2) the amount of damages sought in plaintiffs' administrative claims limits recovery at trial.

#### B. Effect of Brown's "Limited Tort" Election<sup>2</sup>

Brown contends the government may not avoid liability for non-economic damages by relying on his election of the limited tort option. He cites 75 Pa C.S.A. § 1703, which provides: "This chapter [of the PMVFRL regarding the effect of a limited tort election] does not apply with respect to any motor vehicle owned by the United States."

As a threshold matter, Brown's reliance on Kmonk-Sullivan v. State Farm Mutual Insurance Co. v. Erie Insurance Co., 788 A.2d 955, 961-62 (Pa. 2001), is misplaced. In Kmonk-Sullivan, the Court rejected a claim that Commonwealth agency vehicles were not covered by the PMVFRL. The Court also observed that the legislature enacted § 1703 to exempt federally owned vehicles from complying with the insurance provisions of the statute in recognition of the adequacy of the federal government's ability to adequately self-insure. Section 1703 and Kmonk-Sullivan do not apply because this case does not involve the application of the PMVFRL to a Postal Service vehicle. Rather, it involves its application to Brown's vehicle and his auto

---

<sup>2</sup> It is uncontested that Brown's limited tort policy is not binding on Adams. Adams is not an owner of a currently registered motor vehicle and is not a named insured or insured under any motor vehicle policy. See 75 Pa.C.S. § 1705(b)(3) (an uninsured individual who does not own a motor vehicle is not precluded from maintaining an action for non-economic loss or economic loss sustained in a motor vehicle accident as the consequence of the fault of another person pursuant to applicable tort law); Holland v. Marcy, 883 A.2d 449, 457 (Pa. 2005) (children of uninsured motorist who were not owners of an uninsured vehicle and were not named insured or insured under another policy fall within § 1705(b)(3) and may pursue economic and non-economic damages).

insurance policy.

Under the Federal Tort Claims Act, 28 U.S.C.A. §§ 2674-2680 (“FTCA”), the government must be treated as if it were a similarly situated private litigant. The FTCA provides further that “the United States shall be liable, in the same manner and to the same extent as a private citizen under like circumstances.” § 2674. Where the government satisfies the requirements of a statutory scheme, here the PMVFRL, it is considered to be in “like circumstances,” and entitled to the same benefits and protections afforded private persons. See Nationwide Mutual Ins. Co. v. United States, 3 F.3d 1392, 1398 (10th Cir. 1993). Courts in this district that have uniformly concluded the government is similarly situated to a private citizen and entitled to the benefits of the PMVFRL. See Sanderson-Cruz v. United States, 88 F. Supp. 2d 388, 393 (E.D. Pa. 2000) (Reed, J.); Davidson v. United States, 1997 U.S. Dist. LEXIS 356, at \*6 (E.D. Pa. Jan. 14, 1997) (Reed, J.); Leftwich v. Ames, 1996 U.S. Dist. LEXIS 6200, at \*8 (E.D. Pa. May 2, 1996) (Padova, J.). Brown cites no authority supporting his interpretation.

In Leftwich, Judge Padova said the argument Brown asserts “misconstrues the import of § 1703[,]” which “serves only to recognize that Pennsylvania cannot, under the Supremacy Clause of Article VI to the United States Constitution, compel the United States to comply with the terms of the PMVFRL”). Leftwich, 1996 U.S. Dist. LEXIS 6200, at \*12 n.8; Davidson, 1997 U.S. Dist. LEXIS 356, at \*15 n.2; Sanderson-Cruz, 88 F. Supp. 2d at 393 (citing Leftwich with approval and emphasizing that §1703 “states that the act does not apply to any motor vehicle owned by the United States, not that vehicle[s] owned by *private citizens* are exempt from the terms of the PMVFRL if struck by a vehicle owned by the United States”) (italics in original). Thus, where a plaintiff has elected the limited tort coverage under the PMVFRL, he may not

maintain a suit for non-economic damages against the United States absent proof he suffered a serious injury. Leftwich, 1996 U.S. Dist. LEXIS 6200, at \*11.

As in Leftwich, Brown is bound by his decision to elect limited insurance coverage. To recover any non-economic damages, Brown must demonstrate by a preponderance of the credible evidence he suffered serious injuries as a result of the August 16, 2002 accident. See 75 Pa. C.S.A. § 1705(d) (“[u]nless the injury sustained is a serious injury, each person who is bound by the limited tort election shall be precluded from maintaining an action for any non-economic loss).

#### C. The “Registration Exception”

Brown also asserts the “registration” exception to the “limited tort” bar, 75 P.S. § 1705(d)(1)(ii), prohibits the government from relying on Brown’s limited tort election because the Postal Service vehicle involved in the August 2002 accident was not registered in Pennsylvania. This exception, however, applies only to motorists who, at the time of accident, were operating vehicles registered in another state. It does not pertain to the Postal Service, which does not register its vehicles in any state. See Leftwich, 1996 U.S. Dist. LEXIS 6200, at \*11 n.7; Davidson, 1997 U.S. Dist. LEXIS 356, at \*15 and n.2.

#### D. Effect of Administrative Claims

Finally, the government contends plaintiffs are precluded from seeking damages in excess of their administrative claim amounts which cap the amount of total recoverable damages. See 28 U.S.C. § 2675(b) (“[a]ction under this section shall not be instituted for any sum in excess of the amount of the claim presented to the federal agency, except where the increased amount is based upon newly discovered evidence not reasonably discoverable at the time of presenting the

claim to the federal agency, or upon allegation and proof of intervening facts, relating to the amount of the claim.”). Plaintiffs do not contest this assertion and have offered no newly discovered evidence to merit additional damages. At trial, Brown’s damages may not exceed his administrative claim of \$39,296.28, and Adams’ damages may not exceed his administrative claim of \$25,000.00.

An appropriate order follows.

BY THE COURT:

---

TIMOTHY R. RICE  
U.S. MAGISTRATE JUDGE

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

WILLIE BROWN, et al.,	:	CIVIL ACTION
Plaintiffs	:	
	:	
v.	:	
	:	
UNITED STATES OF AMERICA,	:	No. 05-CV-1599
Defendant	:	

ORDER

AND NOW, this            day of January, 2009, having considered the Defendant's motion in limine to exclude certain evidence (Dkt. # 23) and the Plaintiffs' response thereto,<sup>3</sup> it is hereby ORDERED that the motion is GRANTED and the Plaintiffs will be limited as follows:

- (1) the United States may rely upon Willie Brown's election of the "limited tort" option in his automobile insurance policy;
- (2) Brown is prohibited from recovering non-economic damages absent proof by a preponderance of the credible evidence that he suffered a "serious injury" as a result of the August 16, 2002 accident; and
- (3) Plaintiffs' damages are limited to the amounts of their administrative claims.

BY THE COURT:

---

TIMOTHY R. RICE  
U.S. MAGISTRATE JUDGE

---

<sup>3</sup> Plaintiffs elected to rely on the discussion of these issues in their Pretrial Memorandum and not file an additional response.

